Paper No. 12
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THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB JAN. 6, 00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Jeunique International, Inc.

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Serial No. 75/257,418

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Mario A. Martella of Beehler & Pavitt for Jeunique International, Inc.

Lynn A. Luthey, Trademark Examining Attorney, Law Office 104 (Sidney Moskowitz, Managing Attorney)

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Before Hanak, Walters and Chapman, Administrative Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

Jeunique International, Inc. has filed an application to register the mark AU NATURELLE for "skin care preparations, namely clarifying cleanser, balancing toner, replenishing moisturizer, night cream, herbal deep cleansing scrub, purifying skin masque, skin cream, facial cleanser, skin toner, skin moisturizer, breast skin cream, body moisturizing gel, hand and nail treatment cream, foot

moisturizing cream, liquid makeup, and souffle makeup; and hair care preparations, namely, hair shampoo and skin cleansing gel, and hair revitalizing conditioner, lipstick and mascara, all distributed in direct selling to the consumer" in International Class 3.[1]

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), in view of the mark shown below

for "essential oils for personal use, bath gels, bath oils, non-medicated bath salts, body lotion, massage oil, massage lotion, hair care preparations, nail care preparations, cuticle removing preparations, nail polish remover, nail treatments, namely, nail strengthener, non-medicated manicure/pedicure mineral bath salts, manicure/pedicure soaking solituion, nail polish remover with citrus oils, nail polish kits comprised of an assortment of nail

[1] Serial No. 75/257,418, filed March 14, 1997, based on applicant's bona fide intent to use the mark in commerce. Applicant included the following statement: "The translation of the mark 'AU NATURELLE' is the adverb 'naturally' in French."

polishes, hand and foot lotion, lip gloss, potpourri, foot massaging lotion, aromatherapy oils, and aromatherapy oil sprays" in International Class 3.[2]

The Examining Attorney contends that applicant's mark, if applied to its identified goods, would so resemble the previously registered mark as to be likely to cause confusion, mistake or deception.[3]

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested.

We reverse the refusal to register. In reaching this conclusion, we have followed the guidance of the Court in In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See Federated Food, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

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[2] Reg. No. 2,085,270, issued August 5, 1997. The claimed date of first use is June 1975. The registration includes the following statement: "The English translation of the word in the mark is 'unadorned', 'natural', 'unpretentious', in 'the natural state', 'the way God made us'."

[3] The Examining Attorney originally cited and made final the refusal to register under Section 2(d) based on four registrations (three issued to Helene Curtis, Inc.) and the registration listed above, issued to Joyce Carol. In her brief on the case, the Examining Attorney withdrew her Section 2(d) refusal to register based on the three registrations issued to Helene Curtis, Inc.

Applicant stated in its brief on the case (page 5) "There is no dispute that the goods of applicant and those of the registrants are 'closely related or identical.'" We agree that the respective goods of applicant and the cited registrant are closely related or identical.

Further, the Board must determine the issue of likelihood of confusion on the basis of the goods as identified in the application and the registration. See Canadian Imperial Bank of Commerce, National Association v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987). Even though applicant has restricted the channels of trade for its goods to "all distributed in direct selling to the consumer," nonetheless, the cited registrant's channels of trade are not limited in any way. Thus, the Board must consider that the cited registrant's goods could be offered and sold via all normal channels of trade, including the method used by applicant, namely, "direct selling to the consumer." See In re Smith and Mehaffey, 31 USPQ2d 1531 (TTAB 1994); and In re Elbaum, 211 USPQ 639 (TTAB 1981).

Turning to a consideration of the marks, it is well settled that marks must be considered in their entireties. That is, marks must be compared in their entireties, not dissected or split into component parts and each part

compared with other parts. It is the impression created by the marks as a whole that is important. See 3 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §23:41 (4th ed. 1999). In the case before us, the cited registrant's mark is composed of two equally significant parts--the design feature of some type of flora and the double underlined words AU NATUREL, whereas applicant's mark is a typed presentation of the words AU NATURELLE. Both applicant's mark and the word portion of the cited registrant's mark are very highly suggestive of the involved goods.[4] In this case, when the marks are considered in their entireties as the purchasing public views them, we find that the commercial impressions created by the two involved marks are dissimilar.

Decision: The refusal under Section 2(d) is reversed.

E. W. Hanak

C. E. Walters

B. A. Chapman
Administrative Trademark Judges,
Trademark Trial and Appeal Board

[4] The Examining Attorney requested in her brief on appeal that the Board take judicial notice of dictionary definitions offered as exhibits with the brief. Said request is granted pursuant to TBMP §712.